

TAB 2

TITLE 5

CHAPTER 63

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## CHAPTER 63 - LEAVE

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103-329 without corresponding amendment of chapter analysis.

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#### **Footnotes**

- [1] So in original. Two sections 6327 have been enacted.
- [2] Editorially supplied. Section added by Pub. L.

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**Sec. 6301. Definitions**

For the purpose of this subchapter -

- (1) "United States", when used in a geographical sense means the several States and the District of Columbia; and
- (2) "employee" means -
  - (A) an employee as defined by section 2105 of this title; and
  - (B) an individual first employed by the government of the District of Columbia before October 1, 1987;but does not include -
  - (i) a teacher or librarian of the public schools of the District of Columbia;
  - (ii) a part-time employee who does not have an established regular tour of duty during the administrative workweek;
  - (iii) a temporary employee engaged in construction work at an hourly rate;
  - (iv) an employee of the Panama Canal Commission when employed on the Isthmus of Panama;
  - (v) a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs;
  - (vi) an employee of either House of Congress or of the two Houses;
  - (vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;
  - (viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;
  - (ix) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20;
  - (x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;
  - (xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;
  - (xii) a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980); or
  - (xiii) an officer in the legislative or judicial branch who is appointed by the President. Notwithstanding clauses (x)-(xii) of paragraph (2), the term "employee" includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of

the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.

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**Sec. 6302. General provisions**

- (a) The days of leave provided by this subchapter are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order.
- (b) For the purpose of this subchapter an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek.
- (c) A part-time employee, unless otherwise excepted, is entitled to the benefits provided by subsection (d) of this section and sections 6303, 6304(a), (b), 6305(a), 6307, and 6310 of this title on a pro rata basis.
- (d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe.
- (e) If an officer excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.
- (f) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title.
- (g) An employee who is being involuntarily separated from an agency due to a reduction in force or transfer of function under subchapter I of chapter 35 or section 3595 may elect to use annual leave to the employee's credit to remain on the agency's rolls after the date the employee would otherwise have been separated if, and only to the extent that, such additional time in a pay status will enable the employee to qualify for an immediate annuity under section 8336, 8412, 8414, or to qualify to carry health benefits coverage into retirement under section 8905 (b).

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**Sec. 6303. Annual leave; accrual & Sick**

- (a) An employee is entitled to annual leave with pay which accrues as follows -
  - (1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;
  - (2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and
  - (3) one day for each full biweekly pay period for an employee with 15 or more years of service. In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83. However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if -
    - (A) his retirement was based on disability -
      - (i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or
      - (ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38;
    - (B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or
    - (C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days. The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.
- (b) Notwithstanding subsection (a) of this section, an employee whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection.
- (c) A change in the rate of accrual of annual leave by an employee under this section takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.
- (d) Leave granted under this subchapter is exclusive of time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, in the case of an employee -

- (c) Annual leave in excess of the amount allowable -
  - (1) under subsection (a) or (b) of this section which was accumulated under earlier statute; or
  - (2) under subsection (a) of this section which was accumulated under subsection (b) of this section by an employee who becomes subject to subsection (a) of this section; remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year, until the employee's accumulated leave does not exceed the amount allowed under subsection (a) or (b) of this section, as appropriate.
- (d)
  - (1) Annual leave which is lost by operation of this section because of -
    - (A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;
    - (B) exigencies of the public business when the annual leave was scheduled in advance; or
    - (C) sickness of the employee when the annual leave was scheduled in advance; shall be restored to the employee.
  - (2) Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.
  - (3)
    - (A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) during any period, the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977, and the closure of any other installation of the Department of Defense, during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).
    - (B) For the purpose of subparagraph (A), the term "realignment" means a base realignment (as defined in subsection (e)(3) of section 2687 of title 10) that meets the requirements of subsection (a)(2) of such section.
- (e) Annual leave otherwise accruable after June 30, 1960, which is lost by operation of this section because of administrative error and which is not credited under subsection (d)(2) of this



section because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date of discovery of the error. Payment shall be made by the agency of employment when the lump-sum payment provisions of section 5551 of this title last became applicable to the employee at the rate of basic pay in effect on the date the lump-sum provisions became applicable.

- (f)
  - (1) This subsection applies with respect to annual leave accrued by an individual while serving in a position in -
    - (A) the Senior Executive Service;
    - (B) the Senior Foreign Service;
    - (C) the Defense Intelligence Senior Executive Service;
    - (D) the Senior Cryptologic Executive Service; or
    - (E) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.
  - (2) For purposes of applying any limitation on accumulation under this section with respect to any annual leave described in paragraph (1) -
    - (A) "30 days" in subsection (a) shall be deemed to read "90 days"; and
    - (B) "45 days" in subsection (b) shall be deemed to read "90 days".

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**Sec. 6306. Annual leave; refund of lump-sum payment; recredit of annual leave**

- (a) When an individual who received a lump-sum payment for leave under section 5551 of this title is reemployed before the end of the period covered by the lump-sum payment in or under the Government of the United States or the government of the District of Columbia, except in a position excepted from this subchapter by section 6301(2)(ii), (iii), (vi), or (vii) of this title, he shall refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.
- (b) An amount refunded under subsection (a) of this section shall be deposited in the Treasury of the United States to the credit of the employing agency. When an individual is reemployed under the same leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency. When an individual is reemployed under a different leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management. When an individual is reemployed in a position excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, an amount of leave equal to the leave represented by the refund is deemed, on separation from the service, death, or transfer to another position in the service, to have remained to his credit.

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**Sec. 6307. Sick leave; accrual and accumulation**

- (a) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period, except that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department of the District of Columbia on the basis of two-fifths of a day for each full biweekly pay period.
- (b) Sick leave provided by this section, which is not used by an employee, accumulates for use in succeeding years.
- (c) Sick leave provided by this section may be used for purposes relating to the adoption of a child.
- (d) When required by the exigencies of the situation, a maximum of 30 days sick leave with pay may be advanced for serious disability or ailment, or for purposes relating to the adoption of a child, except that a maximum of 24 days sick leave with pay may be advanced to a member of the Firefighting Division of the Fire Department of the District of Columbia.
- (d)
  - (1) <sup>[1]</sup> For the purpose of this subsection, the term "family member" shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall include any individual who meets the definition given that term, for purposes of the leave transfer program under subchapter III, under regulations prescribed by the Office (as in effect on January 1, 1993).  
<sup>[1]</sup> So in original. Probably should be "(e)(1)".
  - (2) Subject to paragraph (3) and in addition to any other allowable purpose, sick leave may be used by an employee -
    - (A) to give care or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such condition, would justify the use of sick leave by such an employee; or
    - (B) for purposes relating to the death of a family member, including to make arrangements for or attend the funeral of such family member.
  - (3)
    - (A) Sick leave may be used by an employee for the purposes provided under paragraph (2) only to the extent the amount used for such purposes does not exceed -
      - (i) 40 hours in any year, plus
      - (ii) up to an additional 64 hours in any year, but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours.
    - (B) In the case of a part-time employee or an employee on an uncommon tour of duty, the Office of Personnel Management shall establish limitations that are proportional to those prescribed under subparagraph (A).
  - (4)
    - (A) This subsection shall be effective during the 3-year period that begins upon the

expiration of the 2-month period that begins on the date of the enactment of this subsection.

- (B) Not later than 6 months before the date on which this subsection is scheduled to cease to be effective, the Office shall submit a report to Congress in which it shall evaluate the operation of this subsection and make recommendations as to whether or not this subsection should be continued beyond such date.

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**Sec. 6308. Transfers between positions under different leave systems**

- (a) The annual and sick leave to the credit of an employee who transfers between positions under different leave systems without a break in service shall be transferred to his credit in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management, unless the individual is excepted from this subchapter by section 6301(2)(ii), (iii), (vi), or (vii) of this title. However, when a former member receiving a retirement annuity under sections 521-535 of title 4, District of Columbia Code, is reemployed in a position to which this subchapter applies, his sick leave balance may not be reccredited to his account on the later reemployment.
- (b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.

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**Sec. 6321. Absence of veterans to attend funeral services**

An employee in or under an Executive agency who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or deduction from annual leave for the time necessary, not to exceed 4 hours in any one day, to enable him to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States.

US Code as of: 01/05/99

**Sec. 6322. Leave for jury or witness service; official duty status for certain witness service**

- (a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives) or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance of efficiency rating, during a period of absence with respect to which he is summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve -
  - (1) as a juror; or
  - (2) other than as provided in subsection (b) of this section, as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party; in the District of Columbia, a State, territory, or possession of the United States including the Commonwealth of Puerto Rico or the Trust Territory of the Pacific Islands. For the purpose of this subsection, "judicial proceeding" means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, but does not include an administrative proceeding.
- (b) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives) or an individual employed by the government of the District of Columbia is performing official duty during the period with respect to which he is summoned, or assigned by his agency, to -
  - (1) testify or produce official records on behalf of the United States or the District of Columbia; or
  - (2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia.
- (c) The Office of Personnel Management may prescribe regulations for the administration of this section.

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**Sec. 6323. Military leave; Reserves and National Guardsmen**

- (a)
  - (1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.
  - (2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year.
- (b) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who -
  - (1) is a member of a Reserve component of the Armed Forces, as described in section 10101 of title 10, or the National Guard, as described in section 101 of title 32; and
  - (2) performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury -
    - (A) Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or
    - (B) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 work-days in a calendar year. Upon the request of an employee, the period for which an employee is absent to perform service described in paragraph (2) may be charged to the employee's accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave.
- (c) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by



the commanding general.

- (d)
  - (1) A military reserve technician described in section 8401(30) is entitled at such person's request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed 44 workdays in a calendar year, in which such person is on active duty without pay, as authorized pursuant to section 12315 of title 10, under section 12301(b) or 12301(d) of title 10 (other than active duty during a war or national emergency declared by the President or Congress) for participation in noncombat operations outside the United States, its territories and possessions.
  - (2) An employee who requests annual leave or compensatory time to which the employee is otherwise entitled, for a period during which the employee would have been entitled upon request to leave under this subsection, may be granted such annual leave or compensatory time without regard to this section or section 5519.

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**Sec. 6326. Absence in connection with funerals of immediate relatives in the Armed Forces**

- (a) An employee of an executive agency or an individual employed by the government of the District of Columbia is entitled to not more than three days of leave without loss of, or reduction in, pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating, to make arrangements for, or attend the funeral of, or memorial service for, an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone (as determined by the President in accordance with section 112 of the Internal Revenue Code).
- (b) The Office of Personnel Management is authorized to issue regulations for the administration of this section.
- (c) This section shall not be considered as affecting the authority of an Executive agency, except to the extent and under the conditions covered under this section, to grant administrative leave excusing an employee from work when it is in the public interest.